

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments)
FM Broadcast Stations)
(Enfield, New Hampshire; Hartford and)
White River Junction, Vermont; and)
Keeseville and Morrisonville, New York))

MB Docket No. 05-162
RM-11227

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AUG - 5 2005

TO: Office of the Secretary

Federal Communications Commission
Office of Secretary

Attn: Assistant Chief, Audio Division, Media Bureau

**CONSOLIDATED RESPONSE TO "MOTION TO STRIKE OR LEAVE TO FILE COMMENTS"
AND "OPPOSITION TO MOTION TO DISMISS"**

1. Hall Communications, Inc. ("Hall"), by and through its attorneys, hereby submits its Consolidated Response to two pleadings filed with respect to Hall's Motion to Dismiss, which was itself filed on July 7, 2005, in the above-captioned proceeding. The two pleadings in question are a "Motion to Strike or Leave to File Comments", filed by Great Northern Radio, LLC ("Great Northern") and an "Opposition to Motion to Dismiss", filed by Nassau Broadcasting, III, L.L.C. ("Nassau").

2. Both Great Northern and Nassau (collectively, the "Opposers") cavil that Hall's Motion to Dismiss is an inappropriate unauthorized pleading. But motions to dismiss are a well-established procedural option for seeking to short-circuit a proceeding which, based on the

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record of that proceeding, warrants no further substantive attention by the Commission.¹ Such is the case here.

3. The *NPRM* on its face failed to address a fundamental flaw in the underlying proposal. That is, the *NPRM* would delete a vacant channel for which an expression of interest has been submitted. Hall called this flaw to the attention of the Commission – and all other parties, including Nassau, the proponent – in its Comments, fully expecting that Nassau might, in its Reply to Hall’s Comments, advance some alternate approach ostensibly designed to accommodate Hall’s expressed interest in the vacant Keeseville channel. Neither Nassau nor Great Northern did so. As a result, when the dust had settled at the close of the designated comment and reply comment periods, it was clear that Nassau’s proposal contravened Commission policy and was thus subject to dismissal. Accordingly, Hall filed its Motion bringing that squarely to the Commission’s attention. In so doing Hall was acting appropriately, since it is clearly in the public interest to prevent the Commission from wasting scarce resources on plainly flawed proposals.

4. While the Opposers both initially present procedural attacks against Hall’s Motion, both also advance “substantive” retorts as well. The gist of their retorts appears to be that a vacant channel really can be deleted even if interest in applying for that channel has previously been expressed and continues to be expressed. Neither Opposer offers any authority for that claim. At most, both cite *Bethel Springs, et al., Tennessee*, 17 FCC Rcd 14472 (Audio Division 2002). But both Opposers acknowledge – under their breath, and with as little emphasis as possible – that in that case, no previously-allotted channel was deleted. Rather, a previously-

¹ Indeed, in the experience of undersigned counsel, the Commission’s staff has generally not required the filing of a motion for leave to submit a motion to dismiss. *See, e.g., Shafter, et al., California*, 17 FCC Rcd 22952 (Audio Division 2002); *Mason, et al., Texas*, 15 FCC Rcd 12618 (Audio Division 2000).

allotted channel was downgraded, *but still left available for future applications in its originally-specified community of allotment.*

5. In the instant case, Nassau's proposal would ***delete*** from the Table a vacant Keeseville channel for which Hall has previously expressed, and continues to express, an interest. Importantly, despite its consistent and repeated expressions of interest, Hall has not yet had an opportunity to file for the Keeseville channel because the Commission has not yet made it available for filing.² The Commission's longstanding policy is ***not*** to delete channels in such circumstances. *See, e.g., Martin et al., Tennessee*, 13 FCC Rcd 17767, 17770, ¶6 (Allocations Branch 1998), *recon. denied*, 15 FCC Rcd 12747 (Allocations Branch 2000); *Driscoll, Texas*, 10 FCC Rcd 6528, ¶2 (Allocations Branch 1995).

6. It is more than a little ironic that both Opposers carp about how Hall is supposedly trying to get the last word here, unnecessarily prolonging this proceeding, etc., etc. In fact, this proceeding is nothing more than an effort by Nassau and Great Northern to take another stab at moving WWOD(FM) into the Burlington market through the geographically convenient location of Keeseville. Great Northern previously sought (in MM Docket No. 02-23) to move WWOD(FM) into Keeseville. But the Commission instead determined, at Hall's urging, that a vacant channel should be allotted to Keeseville.

7. Rather than challenge the validity of that determination through the standard reconsideration and review process, Great Northern simply sold the station to Nassau, which in turn simply re-filed Great Northern's original proposal, with a couple of extra baubles and

² Hall emphasizes that the Keeseville channel which Nassau and Great Northern would delete is merely vacant, and not "abandoned" in any sense. And its vacancy is simply due to the fact that the channel was allotted only very recently, and has thus not been included among the channels available in the single FM channel auction which has already been held or the second auction which is scheduled for November.

bangles stuck onto it in the apparent hope of making it somehow more alluring. But in so doing, Nassau ran smack against the fact on which Great Northern's original version of the proposal had cratered: neither the original nor its Nassau-sponsored retrofit could accommodate a vacant channel in Keeseville. In other words, between the issuance of the Report and Order in MM Docket No. 02-23 and the submission of the Nassau proposal herein, Nassau may have tried to improve the proposal's apparent upper body strength, but it did nothing about the proposal's Achilles' heel.

8. In short, Nassau and Great Northern are proposing that the Commission act in a way which is contrary to established precedent and which would deprive Hall of the opportunity to file for a vacant channel in Keeseville. In their Comments and Reply Comments – and, indeed, in their oppositions to Hall's Motion to Dismiss – neither of the Opposers recognized that precedent (and Hall's rights thereunder), much less explained why that precedent can or should be re-written to accommodate the Opposers' private interests. Under these circumstances, dismissal of this proceeding is warranted.

Respectfully submitted,



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August 5, 2005

CERTIFICATE OF SERVICE

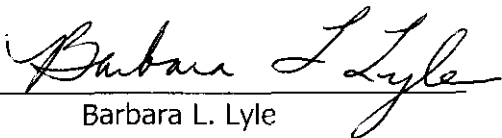
I, Barbara L. Lyle, a secretary at the law firm of Fletcher, Heald & Hildreth PLC, do hereby certify that I caused copies of the foregoing "Consolidated Response to 'Motion to Strike or Leave to File Comments' and 'Opposition to Motion to Dismiss'" to be placed in the U.S. mail, first class postage prepaid, on this 5th day of August, 2005, addressed to the following:

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